

ST 01-0176-GIL 08/31/2001 SERVICE OCCUPATION TAX

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL).

August 31, 2001

Dear Xxxxx:

This letter is in response to your letter dated June 5, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

My name is NAME and I work for COMPANY. We do work for AAA stores all over the United States. AAA is based in CITY/STATE. We install store fixtures that AAA purchases & supplies, we are subcontracted for installation only and receive a lump sum payments for installation services. We will be doing several jobs in your state this year and I need to find out if the labor my company provides is liable to pay state sales tax to your state. Please keep in mind my company only installs the store fixtures. I was wondering if you could provide me with a letter on your state letterhead that clearly defines the rule regarding this request, other than the publicized tax laws and information sheets. I am finding it difficult to interpret the information and look to you for clarification i.e.; yes we are to pay or no we are not. Any help you can provide me would be greatly appreciated. If you have any questions please feel free to call me

From the limited information you provided, we are unable to determine the exact nature of your activities. If you are merely providing a service, then the principles regarding the Service Occupation Tax apply. If, however, you are permanently installing an item of tangible personal property (into real estate) the principles of construction contracting apply.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. If a serviceman does not transfer tangible personal property in the process of providing his service, then tax is not incurred.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service

Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Please see the copy of Part 140, governing Service Occupation Tax, for further details.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

If a construction contractor did not purchase the item of tangible personal property they permanently affix to real estate, they do not incur the tax liability. However, the purchaser of the property that is permanently affixed to real estate owes Use Tax.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.